IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Civil Misc. Writ Petition No. 495 (S/S) of 2001

(Old No. 23747 of 1990)

Krishna Singh Aswal ..... Petitioner

Versus

The State of Uttar Pradesh through

the Secretary, Department of Education

Secretariat, Lucknow and two others. ..... Respondents

.....

Hon'ble P.C.Verma,J

This writ petition has been filed by the petitioner seeking writ of mandamus to command the respondents to fix his seniority with effect from 08.11.1975 when he was appointed on adhoc basis and not to fix his seniority with effect from 10.10.1980 when his services were regularized under the rules known as **the Uttar Pradesh Regularisation of Ad hoc Appointments (On Posts within the Purview of the Public Service Conmmission) Rules, 1979** (hereinafter referred to as the Regularisation Rules).

The petitioner was appointed as Lecturer in Physics on adhoc basis in Government Intermediate College, Ghumetidhar, District-Tehri Garhwal by the order of the Director Education, Uttar Pradesh entertaining his application directly though the post was not advertised. It has not been stated in the writ petition that the post was advertised,

selection committee was constituted and appointment was made on the basis of merit list prepared by the selection committee. The petitioner was purely adhoc appointee. His case was considered for regularization under the Regularisation Rules and the services of the petitioner was regularised w.e.f. 10.10.1980. Rule-7 of the Regularisation Rules provides for determination of seniority of regular employees, which reads as under:-

> "7. **Saving.-**(1) A person appointed under these rules shall be entitled to seniority only from the date of order of appointment after selection in accordance with these rules and shall, in all cases, be placed below the persons appointed in accordance with the relevant service rules, or as the case may be, the regular prescribed procedure, prior to the appointment of such person under these rules,
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> (2) If two or more persons are appointed together, their seniority *inter* se shall be determined in the order mentioned in the order appointment.

It is noticed that the vires of the rules is not under challenge. Therefore, authorities have rightly determined the seniority of the petitioner according to the aforesaid Regularisation Rules. It is needless to say that the law has been settled by the Apex Court that the seniority is to be reckoned from the date when a person become a member of service and adhoc appointee does not become member of service as adhoc appointment is not made according to the rules. Adhoc appointment is made dehors the rules. Therefore, the adhoc appointment cannot become member of service.

Loearned counsel for the petitioner relied on in the case of Dr.H.C.Mathur which was quoted by the Hon'ble Apex in para-4 in the case **Chandra Prakash & others versus**

State of U.P. and another, reported in A.I.R. 2002 Supreme court, Page 1652 which reads as under:-

> "The State of U.P. selectively filed and SLP against the judgment of the High Court in W.P. No. 20408/88, that is in the case of Dr. H.C.Mathur. The said matter came up before this Court in SLP (C) No.13840/92 before a 3-judge bench of this Court which by its order dated 24.11.1992 held thus:
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> *"We have heard Mr.D.V. Sehgal, Sendior counsel appearing for the State of U.P. The respondent in this special leave petition has served the state of U.P. for over 30 years, and he was regularised after he had put in more than 20 year of service. Relying upon the Uttar Pradesh Regulation of Ad-hoc Appointments (On Posts Within the Purview of the Public Service Commission) Rules, 1979, the State of U.P. declined to give him the benefit of 20 years of service towards seniority. The Allahabad High Court allowed this writ petition and granted him the benefit of the whole of the period towards seniority. We see no infirmity in the judgment of the High Court. We agree with the reasoning and the conclusions reached therein. Special leave petition is dismissed."*

Learned counsel for the petitioner further relied on in Paras 17 & 18 of Chandra Prakash & Others' (supra) case of which the Apex Court has held as under:-

> "17. We will now proceed to consider whether there is in fact any conflict between the two sets of judgments. In this process, we must bear in mind the fact that the judgment of this court in Dr. Mathur's case was a confirming judgment wherein this Court upheld the findings of the High Court by a reasoned order though brief. Therefore, it becomes necessary to notice the basis of the judgment of the High Court which was under

appeal before this Court in Dr.Mathur's case. In the said batch of writ pertitions filed before the High Court including that of Dr.Mathur, the High Court held that appointments of temporary doctors were made against substantive vacancies which had fallen vacant due to non-availability of doctors. It also held that the eligibility of the writ petitioners therein for being appointed as PMS-II was not in dispute. It further held that the petitioners therein held the necessary qualification for regular appointment. From the records available before it, the High Court came to the conclusion that the petitioners therein had been working against substantive vacancies and were never treated as ad hoc appointees. It also held that the mere fact that their services were not regularised, would not deny those petitioners the benefit of their continuity in service from the date of their initial appointment. It is on the basis of these findings that the High Court directed to fix the seniority of the temporary doctors from the date of their initial appointment in the PMS cadre, giving them all the service benefits which were due to them after fixing their seniority. It was this judgment when brought this Court, a- 3-judge

bench upheld the same. It also noticed the fact that the Regularisation Rules did not give them that benefit. Still this Court held that those doctors were entitled to count their service from the date of initial appointment for the purpose of counting their seniority. We have already noticed that this judgment has been successively followed in the subsequent cases, one of which at least came before this Court and the said view of this Court was affirmed.

18. In the subsequent judgments of this Court, noticed by us earlier, the 2-judge bench has held that ad hoc appointments made de hors, the rules, did not confer any right to permanency or seniority and that they acquire the right only from the date of their regular appointment according to the rules. It had further held that while those temporary doctors who had approached the High Court and obtained directions from the Court can count their seniority from the date of their initial

appointment, others, meanting thereby those temporary doctors who have not approached the Court but were similarly appointed, could be given the seniority only from the date of their regularisation under the rules. It is, thus, clear from the above referred observations in the judgment of the 2-judge bench that while the 3-judge bench upheld the right of temporary doctors (similary situated as Dr. Mathur) as a class to be entitled to count seniority from the date of their initial appointment by the subsequent judgment, the 2-judge bench has taken a different view by holding that temporary appointees cannot claim seniority from the date of their initial appointment but can count the same only from the date of their reglarisation under rule 7 of the Regularisation Rules. This being the core issue involved in the dispute between the temporary doctors and selectee doctors, in our opinion, the 2-judge bench has taken a directly conflicting view from that taken by the 3-judge bench."

So far as the judgment in Dr. Mathur's case is concerned, which was confirmed by the Constitution Bench of Hon'ble Supreme Court, the doctors were appointed temporarily after the advertisement of posts and the appointment was approved by the Public Service Commission. Here in the instant case, though the post was within the purview of Public Service Commission but the petitioner was not appointed in consultation of the Public Service Commission. It may be stated that though in the said judgment Rule 7 has been noticed but the benefit of past rendered service has been given treating them to be temporary as their appointments were made in consultation with the Public Service Commission. Therefore, the law laid down by the Apex Court in the aforesaid case are not applicable in the instant case.

Learned counsel for the petitioner also relied on in the case **Ram Ujarey versus Union of India, reported in Judgment Today 1998 (7) Supreme Court, Page-603** in Para-8 of which the Hon'ble Apex Court has held as under:-

> "The main issue, therefore, between the parties was whether the period of service rendered by the appellant, from 1964 to 1972 as Coal Khalasi in the Loco Department, was liable to be counted towards his seniority in the Carriage and wagon Department where he was appointed in 1972 or it was to be ignored altogether. It is obvious that if the appellant had already acquired the permanent status in the Loco Department, he would be entitled to the benefit of previous service rendered by him in that Department, for the purpose of his seniority in the Carriage and Wagon Department where was appointed in 1972."

In the aforesaid case the Hon'ble Apex Court directed for counting of the past services as the Court found that the appellant in that case was a transferee in the cadre and gave benefit of past service. For the reason the Hon'ble Court has spceicifally held that the appellant-Khalasi had acquired temporary status and was confirmed later on as substitute khalasi. Thus the aforesaid judgment is of no help to the petitioner.

Learned counsel for the petitioner has also relied on the following case laws:-

(1) Shri L.Chandrakishore Singh versus State of Manipur and others, reported in Judgments Today 1999 (7), Supreme Court, page 576.

(2) R.B.Desai and another versus S.K.Khanolker and others, reported in 1999 (3) E.S.C. Spreme Court, page 1744.

I have examined the judgment cited by the learned counsel for the petitioner and I find that in the facts and circumstances of the present case the ratio of these judgments are snot attracted in the present case.

Rule 7 of Regularisation Rules above specifically provides regarding seniority. Since the petitioner has received all the benefits of provisions of Regularisation Rules, he cannot ignore the consequence of provision of Rule-7. No one can be allowed to avail the benefit in part, which is beneficial to him and to reject the rest of the part which is not beneficial to him.

Therefore, for the reasons recorded above, the petition is devoid of merits and is hereby dismissed. No order as to costs.

(P.C. Verma J.)

23.09.2003

P. Singh